HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.Nos.19680 and 19981 of 1997

Dt.18.4.2006

Between:

Poosarla Sangameswara Rao … Petitioner

And

The Commissioner,

Bobbili Municipality, Bobbili,

Vizianagaram.

…Respondent

COMMON ORDER:

Since the issue involved in these two writ petitions is one and the same, they are being heard and disposed of together.

Petitioners in these two writ petitions question the action of the respondent in enhancing the licence fee from Rs.100/- to Rs.1000/- and imposing of penalty of Rs.250/- vide demand notice dated 24.7.1997 is illegal and arbitrary.

Respondent filed a counter affidavit stating that the licence fee payable by the petitioners was only Rs.188/- and Rs.150/- respectively for the year 1996-97 and the Government of Andhra Pradesh through G.O.Rt. No.21, M.A., Dt.5.1.1996 issued instructions to all the municipalities indicating the structure of rates for improving financial strength of the Municipality. Following the said instructions the respondent Municipality passed resolution No.338, dt.31.8.1996 accepting maximum rates prescribed in the said G.O. Accordingly, notification was published in the District Gazette No.19/97, dt.14.2.1997 duly enhancing the licence fee payable by the licensee at the rate of Rs.1000/- for the year 1997-98 and the petitioner failed to pay the said amount within the time and therefore a penalty of Rs.250/- was imposed. Further, it is the case of the respondent that as per Section 263 of the A.P.Municipalities Act, 1965 (for short 'the Act') the petitioners have to get the licence renewed every year by paying the licence fee.

It is the case of the petitioners that they are carrying business in fertilizers in Bobbili Municipality and selling the same to the farmers and it is a seasonal business and they used to procure fertilizers, urea, super phosphate and DAP from different fertilizer companies and selling the same to each shop. It is further stated that the enhancement of licence fee from Rs.100/- to Rs.1000/- is illegal, arbitrary and without any justification.

Though the petitioners have not raised any legal question in this writ petition, a perusal of Section 263 of the Act goes to show that the Municipal Council is entitled to prohibit any person making use of the same without any licence in accordance with the conditions licence issued by the Commissioner. However, such power of the council is restricted only in relation to various purposes specified in Schedule IV. Fertilizer business is not specified in Schedule IV of the Act.

The learned standing counsel for the respondent fairly submits that the issue involved in this writ petition is squarely covered by the judgment of this Court reported in *Fertilizers, Pesticides and Seeds*

Dealers Welfare Association, Suryapet v. Municipal Council, Suryapet Municipality wherein it is held that the retail business in fertilsiers/kirana/cloth are not items framed in Schedule IV and the Municipality cannot impose any condition of obtaining trade licence in exercise of power under Section 263 of the Act.

Following the aforesaid decision of this Court, these writ petitions are accordingly allowed. No order as to costs.

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V.ESWARAIAH, J.

18.4.2006

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